

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met her burden of proof to establish asbestos-related lung cancer causally related to factors of her federal employment.

FACTUAL HISTORY

On January 21, 2016 appellant, then a 64-year-old retired general clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained breathing problems and lung cancer as a result of exposure to asbestos and dust over the course of 27 years working at the employing establishment. She first became aware of her claimed condition on January 18, 2013 and of its relationship to her employment on March 18, 2013. Appellant explained that she had not filed her claim within 30 days because she did not have all the relevant information. A supervisor noted that appellant had retired on June 27, 2014.

In a report dated March 18, 2013, Dr. Mitchell Magee, a Board-certified thoracic cardiovascular surgeon, diagnosed appellant with an incidental finding of a speculated right upper lobe lung mass with increased risk factors for lung cancer, significantly impaired lung function, adenocarcinoma of the right upper lobe of the lung, hypertension, hyperlipidemia, long-standing history of tobacco use, and a remote history of tuberculosis in 1974.

In an undated statement, appellant noted that she had surgery on March 13, 2013 and that it was determined that she had lung cancer. She expressed her opinion that her condition was due to exposure to asbestos and dust, and that she had been exposed eight hours per day for five days per week while at work.

By letter dated March 21, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It noted that she had not submitted sufficient evidence to substantiate that her diagnosed lung cancer was caused or aggravated by factors of her federal employment. OWCP afforded appellant 30 days to submit additional medical evidence.

In a letter dated April 8, 2016, Dr. Paul S. Worrell, a Board-certified osteopath, noted that on December 5, 2012 appellant was evaluated with a chest x-ray and that, after further inspection *via* a computerized tomography (CT) scan a lung mass was noted. Attached to this letter, appellant submitted her own statement dated April 18, 2016 in which she noted that no preoperation biopsy was performed due to the size of the mass, and that the mass had been removed through surgery. She wrote, "There was no invasion to the lymph nodes tested. I was truly blessed and I did not have to have chemo nor radiation, so there are no oncology reports, notes, etc."

In a surgical pathology consultation report dated March 18, 2013, Dr. Magee noted that his final microscopic diagnosis postsurgery and excision was an adenocarcinoma.

OWCP prepared a statement of accepted facts (SOAF) on June 2, 2016. In the SOAF, it noted that it had accepted that the floors in the building where appellant worked contained

asbestos during her tenure. OWCP further noted that the employing establishment concurred with appellant that no protective precautions were taken.

By letter dated July 15, 2016, appellant requested an update on her claim's status.

By decision dated August 1, 2016, OWCP denied appellant's claim for compensation. It found that she had not submitted any medical evidence containing a medical diagnosis in connection with exposure to asbestos in the course of her federal employment, explaining, "Medical evidence was received indicating that you suffer from a pulmonary condition. However, there is no evidence that the pulmonary condition from which you suffer is asbestos-related."

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷

³ Gary J. Watling, 52 ECAB 278, 279 (2001); Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

⁴ Michael E. Smith, 50 ECAB 313, 315 (1999).

⁵ Victor J. Woodhams, 41 ECAB 345 (1989).

⁶ Roma A. Mortenson-Kindschi, 57 ECAB 418, 428 n.37 (2006); Katherine J. Friday, 47 ECAB 591, 594 (1996).

⁷ P.K., Docket No. 08-2551 (issued June 2, 2009); Dennis M. Mascarenas, 49 ECAB 215, 218 (1997).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

Appellant alleged that she developed lung cancer due to asbestos exposure during her federal employment. OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the employment factors occurred as alleged. It denied her claim because she had not submitted sufficient medical evidence containing a medical diagnosis in connection with her claimed injury.

The Board finds that appellant did not submit sufficient medical evidence to establish a medical diagnosis of asbestos-related lung cancer. The medical evidence of record does not address appellant's alleged asbestos exposure at her workplace as a risk factor for her general diagnosis of adenocarcinoma.

In a report dated March 18, 2013, Dr. Magee diagnosed appellant with an adenocarcinoma of the right upper lobe of the lung. In a surgical pathology consultation report dated March 18, 2013, he noted that his final microscopic diagnosis, postsurgery and excision, was an adenocarcinoma. However, Dr. Magee did provide a firm diagnosis of asbestos-related lung cancer. The medical opinion of a physician does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, but neither can such opinion be speculative or equivocal.¹¹ The risk factors noted by Dr. Magee included long-term tobacco usage, hypertension, hyperlipidemia, and tuberculosis, but asbestos exposure was not mentioned. As previously noted, the medical evidence must establish that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed.¹²

Lung cancer is a very broad diagnosis with many potential etiologies, but the only etiology claimed as work-related by appellant was not noted by any physician. The lung cancer

⁸ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁹ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

¹⁰ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

¹¹ *See J.B.*, Docket No. 11-1082 (issued March 14, 2012).

¹² *Supra* note 5.

diagnosis therefore appears to be for a coincidental condition with several other potential causes not including exposure to asbestos. The Board finds that appellant has not established a diagnosis of asbestos-related lung cancer.

As appellant has not submitted rationalized medical evidence containing a diagnosis of asbestos-related lung cancer, she has not submitted sufficient evidence to establish the medical component of fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained asbestos-related lung cancer causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board